

Appln. No. 10/680,368
Amdt. dated November 9, 2006
Reply to Office Action mailed August 9, 2006

REMARKS/ARGUMENTS

The above-identified application has been reviewed in light of the Office Action mailed on August 9, 2006. Claims 1-23 are pending. By the present amendment, applicants have amended claims 1, 10, 11, 14 and 21. It is respectfully submitted that the claims pending in the application are fully supported by the specification, introduce no new matter, and are patentable over the prior art.

In the Office Action, claims 10 and 11 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Office Action specifically asserted that there was no antecedent basis for the term "obturator" in claims 10 and 11. Claims 10 and 11 have been amended to provide proper antecedent basis for the term "obturator." It is respectfully requested that the rejection of claims 10 and 11 be withdrawn.

In addition, the Office Action rejected claims 1-3, 6-9, 12, 13, and 21-23 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,925,058 to Smith et al. (Smith). According to the Office Action, Smith discloses a device having a cannula attached to a housing, a dissector having a housing, a tube and a balloon. The housings, the Office Action asserted, attach to each other at 564, 520, and 514 as shown in Figure 14 of Smith. Further, the Office Action stated that Smith discloses an obturator or endoscope slidable inside the housing, an anchoring balloon attached to the distal end of the cannula, ports on the cannula housing for anchor balloon inflation and insufflation, and a port on the dissector housing for inflation of the dissection balloon.

Claims 1, 14, and 21, as amended herein, recite a device for performing surgical procedures having, *inter alia*, a dissector assembly having a "rigid" tube. With reference

to Figure 14, Smith discloses an apparatus for tissue dissection, including a housing 509, cannula 505, retaining ring 514, clamp 503, a second housing 513, a dissection balloon 512 having a long neck 512A, and an obturator 515 or endoscope 515'.

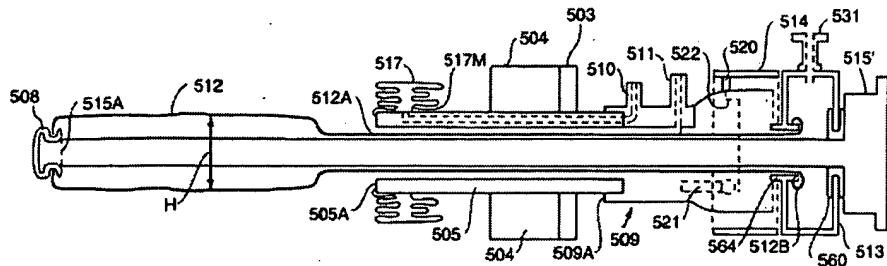


FIG. 14

Notably, long neck 512A, which the Office Action regards as a tube, is part of the dissector balloon 512. The term "balloon," as used in the specification of Smith, refers to "any inflatable structure." See column 24, lines 44-46. Smith, however, fails to disclose a dissector assembly having a rigid tube. As previously discussed, the Office Action asserted that the tube recited in claim 1 was tantamount to the long neck 512A disclosed by Smith. However, the tube recited in claim 1 is a "rigid" tube while Smith's long neck 512A is an inflatable structure. Applicants therefore respectfully submit that, for at least the reasons presented above, claims 1, 14 and 21 are not anticipated or suggested by Smith and are in condition for allowance. Since claims 2 to 11, 15 to 20 and 22 to 23 depend from claims 1, 14 and 21, respectively, applicants submit that claim 2 to 11, 15 to 20, and 22 to 23 are also in condition for allowance.

The Office Action also rejected claims 1 to 11 and 14 to 19 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,540,711 to Kieturakis et al. (Kieturakis). The Office Action asserted that Kieturakis discloses a device having a

cannula with a skin seal, a dissector housing with a tube and a dissection balloon attached thereto, and an obturator sliding inside the dissection tube into the interior of the balloon. The Office Action further stated that this embodiment of Kieturakis does not disclose a latching structure on the housings, but is disclosed in earlier embodiments of Kieturakis.

Claims 1 and 14, as amended herein, recite a device for performing surgical procedures including, *inter alia*, a dissector assembly having a "rigid" tube having a passage, the elongated tube extending distally from the dissector housing; and a dissection balloon attached to the distal end of the elongated tube, the dissection balloon having a chamber in communication with the passage. Kieturakis, in contrast, discloses an apparatus for creating an anatomical working space in tissue comprising, *inter alia*, a balloon 772, a tubular member 731 extending through the balloon, a tubular member 741 sealed within the balloon 722 and in communication with the interior of the balloon 722 through its open end and through a plurality of longitudinal spaced apart holes 745 in communication with the balloon inflation lumen. Kietarukis discloses a tubular member 731 that is secured to the neck of the balloon, but does not have a passage in communication with a chamber in the dissection balloon. Tubular member 741 carries a balloon inflation lumen which is in communication with the interior of the balloon 722. Kieturakis, however, fails to disclose a rigid elongated tube having a passage in communication with a chamber in the dissection balloon and extending distally from the dissection housing. Applicant therefore submits that, for at least the reasons presented above, claims 1 and 14 are not anticipated or suggested by Kieturakis. Adding the latching structure of the other embodiments disclosed in Kieturakis fails to cure the

Appln. No. 10/680,368
Amdt. dated November 9, 2006
Reply to Office Action mailed August 9, 2006

deficiencies of Kieturakis and does not suggest the assembly recited in claims 1 and 14. Therefore, it is submitted that the combination of the embodiments disclosed in Kieturkas does not suggest the assembly recited in claims 1 and 14. Since claims 2-13 and claims 15-20 depend from claims 1 and 14, respectively, it is respectfully submitted that those claims are not suggested by Kieturakis and are in condition for allowance.

The Office Action also rejected claims 12, 13 and 20-23 under 35 U.S.C. § 103(a) as being unpatentable over Kieturakis in view of U.S. Patent No. 5,803,901 to Chin et. al. (Chin). As discussed above, the Office Action asserted that Kieturakis discloses a device having a cannula with a skin seal, a dissector housing with a tube and a dissection balloon attached thereto, and an obturator sliding inside the dissection tube into the interior of the balloon. Furthermore, the Office Action acknowledged that Kieturakis fails to disclose the use of an anchoring balloon on a cannula. The Office Action asserted that Chin discloses the use of an anchoring balloon on a cannula tube and that it would have been obvious to provide the cannula of Kieturakis with an anchoring balloon, as disclosed in Chin.

As previously discussed, Kieturakis does not disclose or suggest a dissection and access assembly including, *inter alia*, a dissector assembly including a “rigid” tube, as recited in claims 1 and 14. Adding the anchoring balloon disclosed by Chin fails to cure the deficiencies of Kieturakis. Since claims 12-13 and claim 20 depend from claims 1 and 14, respectively, it is submitted those claims are not suggested by the combination of Kieturakis and Chin and are in condition for allowance. For the same reasons discussed above, claim 21, as presently amended, is not anticipated or suggested by Kieturakis.

Appln. No. 10/680,368
Amdt. dated November 9, 2006
Reply to Office Action mailed August 9, 2006

Adding the anchoring balloon disclosed by Chin fails to cure the deficiencies of Kieturakis. Since claims 22-23 depend from claim 21, it submitted that those claims are not suggested by the combination of Kieturakis and Chin and are in condition for allowance.

In view of the foregoing amendments and remarks, applicants respectfully submit that each of the rejections of claims 1 to 23 has been overcome. Prompt and favorable action on these claims is earnestly requested. Should the Examiner desire a telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,



Dana A. Brussel
Reg. No. 45,717
Attorney for Applicant(s)

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road - Suite 225
Melville, New York 11747
Tel.: (631) 501-5713
Fax: (631) 501-3526

Send correspondence to:
Chief Patent Counsel
Tyco Healthcare Group
195 McDermott Road
North Haven, Connecticut 06473